

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-7448

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 75-7448

The People of the United States
of America Ex Rel. SOLOMON O.
BATTLE, Pres., PANTHER HOUSE,
LTD. et al., Officers and Members,
24 East 21st Street, NYC, N.Y.
10010,

Plaintiffs-Appellants,

-against-

NELSON ALDRICH ROCKEFELLER, Vice-
Pres., USA, The White House,
Washington, D.C.; DAVID ROCKEFELLER
Chmn., Chase Man. Bnk., 1 Chase Man
Pl., NYC, N.Y. 10005; and A. JOHN
MARINO, ESQ., Atty., Chase Man. Bnk.,

Defendants-Appellees.

On Appeal from the United States District
Court for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLEE DAVID ROCKEFELLER

Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant-Appellee
David Rockefeller

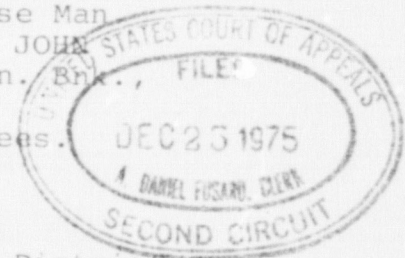


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TABLE OF AUTHORITIES

Case: Adickes v. S. H. Kress & Co., 398 U.S.
144 (1970)

Statute: 42 U.S.C. § 1983

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On Appeal from the United States District
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This is an appeal from an order
of the United States District
Court, Southern District of New
York (Werker, J.), dated June 24,
1975 and filed June 26, 1975,

dismissing the complaint herein
for failure to state a claim
upon which relief could be granted.

Statement of the Issue

Does the complaint state a claim upon which relief
can be granted?

Statement of the Case

Plaintiffs commenced this action by service
of a summons dated May 28, 1975 and a complaint.
The complaint, at best, is unclear as to the
nature or basis of plaintiffs' purported claim
against defendants. The only suggestion as to
the gravamen of their complaint is contained in
the statement of jurisdiction and "Point II" of
the complaint which refer to 42 U.S.C. § 1983.

On June 17, 1975, defendant David Rockefeller
moved to dismiss the complaint as against him
pursuant to Rule 12(b)(6) of the Federal Rules
of Civil Procedure, on the ground that the complaint
failed to state a claim upon which relief could be
granted. On June 24, 1975, the Court granted

that motion. The Court's order was filed on June 26, 1975. On July 25, 1975, plaintiffs filed a notice of appeal.

Point I

THE COMPLAINT WAS PROPERLY DISMISSED

The complaint fails to state a claim upon which relief can be granted.

The statement of jurisdiction and "Point II" of the complaint suggest that plaintiffs' claim is based on 42 U.S.C. § 1983. With the exception of these references there is nothing in the complaint to indicate the nature of this action.

Section 1983 of 42 U.S.C. provides as follows:

"Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

To state a claim under this section it must be alleged that the defendant acted under color

of state law and that in so acting deprived plaintiff of rights secured by the United States Constitution and laws. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).

No such allegations are made in the complaint against David Rockefeller. The only references in the complaint to David Rockefeller are in:

a) paragraph H, where it is alleged that a certain committee "commenced a news release to [him]";

b) paragraph I, where it is alleged that the Panther House bank account was closed "under the direction of the said David Rockefeller";

c) paragraph J, where it is alleged that David Rockefeller operates a "Federally Guaranteed business interprise [sic]"; and

d) Point III, 2), demanding damages "as against Nelson Aldrich Rockefeller, and his brother David Rockefeller, in the amount of \$2,500,000".

None of these allegations describe any action taken by David Rockefeller under color of state law. Nor could any such allegations

be made. Plaintiffs could not prove any set of facts against David Rockefeller which would entitle them to relief under 42 U.S.C. § 1983.

Conclusion

The order of the District Court should be affirmed, with costs.

Dated: December 2, 1975

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for Defendant-Appellee
David Rockefeller

UNITED STATES COURT OF APPEALS ;
SECOND CIRCUIT

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MARINO, ESQ., Atty., Chase Man. Bnk.,:

Defendants-Appellees. :

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STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

AFFIDAVIT OF SERVICE

Docket No. 75-7448

STEVEN L. KROLESKI, being duly sworn, deposes and

STEVEN L. KROLESKI, being duly sworn, deposes and
says:

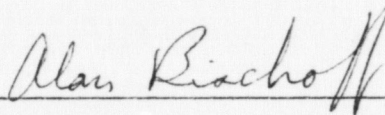
I am over the age of 18 years and am not a party to
this action.

On the 22nd day of December, 1975, I served the
within Brief on Solomon O. Battle, by depositing two true copies
thereof, securly enclosed in a post-paid wrapper, addressed to
him at 24 East 21st Street, c/o Panther House, Ltd., New York.
New York 10010, in a mailbox by the Government of the United
States at 1 Chase Manhattan Plaza, New York, New York.



Sworn to before me this

23rd day of December, 1975.



ALAN BISCHOFF
NOTARY PUBLIC, State of New York
No. 24-0299258
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1977



(2)

COPY RECEIVED

Thomas J. Cabell

UNITED STATES ATTORNEY

12/22/75

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